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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re:

NETWORK SERVICES SOLUTIONS, LLC,

Debtor.

CHRISTINA W. LOVATO, Trustee of the
 bankruptcy estate of NETWORK SERVICES
 SOLUTIONS, LLC, a Nevada limited liability
 company,

Plaintiff,

v.

SCOTT A. MADISON, an individual; LISA
 MADISON, an individual; and the MADISON
 FAMILY TRUST DATED NOVEMBER 7,
 2014, a Nevada trust,

Defendants.

SCOTT A. MADISON,

Appellant,

vs.

CHRISTINA LOVATO, Trustee,

Appellee.

Case No. BK-N-17-50309-GWZ

Chapter 7 Case

Adv. Proc. No. 19-05015-GWZ

Appeal Reference No. 20-07

Case No. 3:20-cv-00172-MMD

**APPELLEE’S MOTION TO DISMISS
 UNTIMELY BANKRUPTCY APPEAL
 FOR LACK OF JURISDICTION**

1 This case comes before the Court on an untimely appeal from a final judgment entered by
 2 the United States Bankruptcy Court for the District of Nevada on February 27, 2020 (the
 3 “Judgment”) in an adversary proceeding arising under a chapter 7 bankruptcy case captioned In re
 4 Network Services Solutions, LLC, Case No. 17-50309-GWZ. Appellee Christina W. Lovato,
 5 Trustee of the Chapter 7 estate of Debtor Network Services Solutions, LLC (“Trustee” or
 6 “Appellee”), hereby moves for an order dismissing the appeal from the Judgment filed by
 7 Defendant Scott A. Madison (“Mr. Madison” or “Appellant”) on March 13, 2020 on the ground
 8 that the notice of appeal was untimely filed and therefore this Court lacks subject matter
 9 jurisdiction.

10 This motion is supported by the following memorandum of points and authorities, the
 11 attached exhibits, the Declaration of Elizabeth High in Support of Appellee’s Motion to Dismiss
 12 Untimely Bankruptcy Appeal for Lack of Jurisdiction (the “High Declaration”) and the papers and
 13 pleadings on file in the underlying Adversary Proceeding and Bankruptcy Case, of which Appellee
 14 requests that this Court take judicial notice. Fed. R. Evid. 201.

15 **STATEMENT OF FACTS**

16 On March 20, 2017, Network Services Solutions, LLC (the “Debtor”) filed a voluntary
 17 petition for relief under chapter 11 of the Bankruptcy Code. Bankruptcy Docket No. 1. On August
 18 29, 2017, the Bankruptcy Court converted the case to one under chapter 7 of the Bankruptcy Code
 19 on motion filed by the United States Trustee. Bankruptcy Docket No. 161.

20 Appellant Scott A. Madison was the sole manager and member of the Debtor. Bankruptcy
 21 Docket No. 1. On June 20, 2019, the Trustee filed the underlying adversary proceeding in the
 22 Bankruptcy Court (the “Adversary Proceeding”) against Appellant, his wife, Lisa Madison (“Mrs.
 23 Madison”), and the Madison Family Trust Dated November 7, 2014 (the “Madison Family Trust,”
 24 and with Mr. Madison and Mrs. Madison, “Defendants”). Adv. Proc. Docket No. 1. The Trustee
 25 alleged, among other things, that in the twenty-seven months before Debtor’s March 2017 chapter
 26 11 filing, Defendants took over \$2,700,000 from the Debtor, during a time the Debtor was unable
 27 to pay its creditors. Id. On July 25, 2019, Defendants appeared through counsel, John Bartlett,

1 Esq., and filed an Answer, in which they admitted many, if not most, of the allegations made in
2 the Complaint. Adv. Proc. Docket No. 4.

3 On December 26, 2019, the Trustee filed a Motion for Partial Summary Judgment
4 (“Motion”), a Separate Statement of Undisputed Material Facts in support of Plaintiff’s Motion
5 for Partial Summary Judgment to which Exhibits A – EE were attached (“SUMF”), the
6 Declarations of Trustee Christina W. Lovato, Timothy Nelson, CPA, Elizabeth High, Esq. and
7 Elizabeth Dendary, CP (collectively, the “Declarations”), and a Notice of Hearing on Plaintiff’s
8 Motion for Partial Summary Judgment (“Notice of Hearing”). A true and correct copy of the
9 Motion, Lovato and Nelson Declarations, and Notice of Hearing are attached hereto as Exhibit 1.
10 High Declaration.¹ The Trustee served Defendants, through counsel, with the Motion, the SUMF,
11 the Declarations and the Notice of Hearing. A true and correct copy of the Certificate of Service
12 is attached hereto as Exhibit 2. High Declaration.

13 On January 2, 2020, Defendants’ counsel filed a Motion to Withdraw as Counsel of Record
14 for Defendants (“Motion to Withdraw”) and a Notice of Hearing on the Motion to Withdraw,
15 which was set for hearing on the same date and time as the Trustee’s Motion. True and correct
16 copies of the Motion to Withdraw (without exhibit) and Notice of Hearing are attached hereto as
17 Exhibit 3. High Declaration. In his Motion to Withdraw, Mr. Bartlett represented that he had sent
18 the Trustee’s Motion and all supporting documentation to the Defendants and had made them
19 aware of the deadline for filing a response. Id., p. 2. On January 7, 2020, the Trustee filed a
20 Response to Motion to Withdraw noting that while she had no objection to counsel’s withdrawal,
21 the Local Rules of Practice for the District of Nevada and the Nevada Rules of Professional
22 Conduct provide that counsel’s request did not affect Defendants’ obligation to timely file an
23 opposition, along with supporting evidence, to the Summary Judgment Motion. A true and correct
24

25 _____
26 ¹ The SUMF is voluminous and its contents, while important for the underlying Summary
27 Judgment Motion, are not at issue at this time in the Appeal before this Court because the
underlying merits of the Judgment are not at issue due to the lack of this Court’s jurisdiction. The
SUMF is available as Docket No. 17 in the Adversary Proceeding.

1 copy of the Response to Motion to Withdraw and the Certificate of Service of the same, reflecting
 2 service on Attorney Bartlett and on the Defendants, is attached hereto as Exhibit 4. High
 3 Declaration. Defendants did not oppose the Motion to Withdraw. High Declaration.

4 Thereafter – despite receiving ample notice and still being represented by counsel –
 5 Defendants did not file any pleading in opposition to the Trustee’s Motion. High Declaration. On
 6 January 21, 2020, the Trustee filed a Reply in Support of Plaintiff’s Motion for Partial Summary
 7 Judgment (“Reply”). A true and correct copy of the Reply and the Certificate of Service of the
 8 same, reflecting service on Attorney Bartlett and on the Defendants, is attached hereto as Exhibit
 9 5. High Declaration.

10 On February 6, 2020, the Court held a hearing on both the Trustee’s Motion and the Motion
 11 to Withdraw. A true and correct copy of the Transcript of February 6, 2020 Hearing is attached
 12 hereto as Exhibit 6. High Declaration. While Mrs. Madison was present in Court during the
 13 hearing, Mr. Madison did not appear. Id., pp. 3, 14. The Court first heard the Motion to Withdraw
 14 and in response to the Court’s questions, Mrs. Madison indicated that she had no objection to the
 15 Motion to Withdraw. Id., p. 15. Mr. Bartlett represented on the record that he had had “numerous
 16 discussions” with both Mr. and Mrs. Madison in the thirty (30) days preceding the hearing and that
 17 Mr. Madison had not objected to Mr. Bartlett’s withdrawal. Id., pp. 14-15. The Court granted the
 18 Motion and on February 13, 2020, the Court entered the Order Granting Motion of John S. Bartlett
 19 to Withdraw as Counsel of Record for Defendants, a true and correct copy of which is attached
 20 hereto as Exhibit 7. High Declaration.

21 The Court then held a lengthy hearing on the Trustee’s Motion, making extensive findings
 22 of fact and conclusions of law on the record, which the Court granted at the hearing and
 23 memorialized in writing on February 13, 2020 in the Findings of Fact and Conclusions of Law in
 24 Support of Order Granting Plaintiff’s Motion for Partial Summary Judgment (“FOFCOL”) and a
 25 separate Order Granting Plaintiff’s Motion for Partial Summary Judgment (“Summary Judgment
 26 Order”). Adv. Proc. Docket Nos. 36 and 37. On February 14, 2020, the Trustee filed and served
 27 a Notice of Entry of the FOFCOL and Summary Judgment Order, which was served on Defendants

1 at the email addresses confirmed during the February 6, 2020 hearing. True and correct copies of
 2 the Notice of Entry (to which the FOFCOL and Summary Judgment Order are attached) and the
 3 Certificate of Service are attached hereto as Exhibit 8. High Declaration.

4 On February 27, 2020, the Bankruptcy Court entered the Judgment against Defendants.
 5 Adv. Proc. Docket No. 41; Appeal Docket No. 1, pp. 9-11. The Trustee filed and served a Notice
 6 of Entry of Judgment on the Defendants on February 28, 2020 via E-mail and U.S. Mail. True and
 7 correct copies of the Notice of Entry of Judgment and Certificate of Service are attached hereto as
 8 Exhibit 9. High Declaration.

9 Appellant filed his Notice of Appeal on March 13, 2020. Adv. Proc. Docket No. 49;
 10 Appeal Docket No. 1, pp. 6-8. The Bankruptcy Court file-stamped the Notice of Appeal on March
 11 13, 2020 and docketed the Notice of Appeal on March 16, 2020. Id.

12 LEGAL ARGUMENT

13 “The timely filing of a notice of appeal is mandatory and jurisdictional.” Key Bar Invs.,
 14 Inc. v. Cahn (In re Cahn), 188 B.R. 627, 630 (B.A.P. 9th Cir. 1995) (citing Browder v. Dir., Dep’t
 15 of Corr. of Ill., 434 U.S. 257, 264 (1978) and Slimick v. Silva (In re Slimick), 928 F.2d 304, 306
 16 (9th Cir. 1990)); In re Nucorp Energy, Inc., 812 F.2d 582, 584 (9th Cir. 1987). A bankruptcy court
 17 may extend the time for filing the notice of appeal, so long as the party requesting the extension
 18 files a written motion before the time for filing a notice of appeal has expired, except that such a
 19 motion filed not later than 21 days after the expiration of the time for filing a notice of appeal may
 20 be granted upon a showing of excusable neglect. Warrick v. Birdsell (In re Warrick), 278 B.R.
 21 182, 185 (B.A.P. 9th Cir. 2002).

22 Part VIII of the Federal Rules of Bankruptcy Procedure “govern the procedure in a United
 23 States district court and a bankruptcy appellate panel on appeal from a judgment, order or decree
 24 of a bankruptcy court.” Fed. R. Bankr. P. 8001(a). Rule 8002 provides:

25 (1) Fourteen-day period. Except as provided in subdivisions (b)
 26 and (c), a notice of appeal must be filed with the bankruptcy clerk
 27 within 14 days after entry of the judgment, order, or decree being
 appealed.

1 ...

2 (5) Entry Defined.

3 (A) A judgment, order, or decree is entered for purposes of
4 this Rule 8002(a):

5 (i) when it is entered in the docket under Rule
6 5003(a), or

7 (ii) if Rule 7058 applies and Rule 58(a) F.R.Civ.P.
8 requires a separate document, when the judgment,
9 order, or decree is entered in the docket under Rule
10 5003(a) and when the earlier of these events occurs:

- 11 • the judgment, order, or decree is set out in a separate
12 document; or
- 13 • 150 days have run from entry of the judgment, order, or
14 decree in the docket under Rule 5003(a).

15 Fed. R. Bankr. P. 8002(a).²

16 Thus, the time for taking an appeal runs from the “entry” of the order, that is, when it is
17 noted on the official public record, *i.e.*, the docket. Guy v. Danzig (In re Danzig), 233 B.R. 85
18 (B.A.P. 8th Cir. 1999). As stated by the court in In re Bunt, 165 B.R. 894, 895 n.3. (Bankr. E.D.
19 Ark. 1994), “‘entry’ of a document is distinct from ‘dated’ or ‘filed.’ The term ‘dated’ refers to
20 the date the judge signs the order. A document is ‘filed’ on the date the clerk file-stamps it. A
21 document is ‘entered’ when it is actually recorded on the docket sheet or book by the clerk.” Id.;
22 see also Fed. R. Bankr. P. 5003 (“The entry of judgment or order on a docket shall show the date
23 the entry is made.”).³

24 Whether the appellant had notice of the judgment does not affect its validity, nor the date

25 ² Subsections (b) and (c) of Rule 8002 are inapplicable to the present appeal.

26 ³ In contrast to Bankruptcy Rule 8002, Nev. R. App. P. 4(a)(1) provides “a notice of appeal must
27 be filed after entry of a written judgment or order, and no later than 30 days after the date that
 written notice of entry of the judgment or order appealed from is served”). Thus, the Nevada Rules
 of Appellate Procedure specifically state that the time to file a notice of appeal runs from the date
 of **service of written notice of entry of the judgment** appealed from. If this were the federal rule,
 Congress would have so stated.

1 on which the notice of appeal should have been filed. Indeed, Fed. R. Bankr. P. 9022 specifically
 2 provides that “[l]ack of notice of the entry does not affect the time to appeal or relieve or authorize
 3 the court to relieve a party for failure to appeal within the time allowed, except as permitted in
 4 Rule 8002.”

5 Significantly, the Ninth Circuit has consistently held that the failure to adhere to the time
 6 requirements of Rule 8002 “is a jurisdictional defect barring appellate review.” Wiersma v. Bank
 7 of the W. (In re Wiersma), 483 F.3d 933, 938 (9th Cir. 2007); see also Delaney v. Alexander (In
 8 re Delaney), 29 F.3d 516, 518 (9th Cir. 1994) quoting In re Mouradick, 13 F.3d 326, 327 (9th Cir.
 9 1994) (“The provisions of Bankruptcy Rule 8002 are jurisdictional; the untimely filing of a notice
 10 of appeal deprives the appellate court of jurisdiction to review the bankruptcy court's order.”); In
 11 re Bushnell, 273 B.R. 359, 363 (Bankr. D. Vt. 2001) (“[I]t is well settled that the filing
 12 requirements of Rule 8002 are jurisdictional and failure to timely file a notice of appeal precludes
 13 appellate review.”). The time provisions in Bankruptcy Rule 8002 must be “strictly construe[d].”
 14 In re Souza, 795 F.2d 855, 857 (9th Cir 1986).

15 Before proceeding to the merits of the appeal, a district court considering a bankruptcy
 16 appeal must address the threshold question of jurisdiction. Indeed, courts have an “independent
 17 duty to confirm that our jurisdiction is proper.” Reese v. BP Expl. (Alaska) Inc., 643 F.3d 681,
 18 688 (9th Cir. 2011) (quoting Kuehner v. Dickinson & Co., 84 F.3d 316, 318-19 (9th Cir. 1996));
 19 Stanley v. Crossland, Crossland, Chambers, MacArthur & Lastreto (In re Lakeshore Village
 20 Resort), 81 F.3d 103, 105 (9th Cir. 1996) (the court has an independent obligation to examine the
 21 existence of subject matter jurisdiction). It is axiomatic that a notice of appeal that is untimely
 22 fails to give the district court appellate jurisdiction. Souza, 795 F.2d at 857.

23 In this case, the Judgment against the Defendants was entered on the docket on February
 24 27, 2020 as a separate document as required pursuant to Bankruptcy Rule 7058 and Fed. R. Civ.
 25 P. 58(a), see Adv. Proc. No. 41 and Appeal Docket No. 1, pp. 9-11; thus, the fourteen-day period
 26 to file the notice of appeal expired on March 12, 2020. Fed. R. Bankr. P. 8002(a)(1). Appellant
 27 filed the Notice of Appeal on March 13, 2020, which was past the deadline. Adv. Proc. Docket

1 No. 49; Appeal Docket No. 1, pp. 6-8. Significantly, Appellant had ample notice that the Judgment
 2 would be entered as he was served with the FOFCOL and Summary Judgment Order on February
 3 14, 2020. Ex. 8.

4 Moreover, Appellant has not filed any motion – either timely or untimely – to extend the
 5 time to file an appeal. Even if such a motion to extend had any basis in fact or law, the time within
 6 to do so expired on March 12, 2020 and the time to file a motion based on excusable neglect
 7 expired 21 days after the notice of appeal period, or, in other words, on April 2, 2020. Fed. R.
 8 Bankr. P. 8002(d)(1).⁴ Based on these clear legal standards, because the Notice of Appeal was
 9 filed after the time expired to file an appeal, the Court entirely lacks jurisdiction to hear the present
 10 appeal.

11 It is irrelevant to the Court’s disposition of this Motion that the Appellant is proceeding *in*
 12 *propria persona*. The Ninth Circuit long ago held that “[p]ro se litigants are not excused from
 13 complying with these rules.” King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), *overruled in part*
 14 *on other grounds in* Lacey v. Maricopa Cty., 693 F.3d 896, 928 (9th Cir. 2012); see also Clinton
 15 v. Deutsche Bank Nat’l Tr. Co. (In re: Clinton), 449 B.R. 79, 83 (B.A.P. 9th Cir. 2011); Carter v.
 16 Commissioner, 784 F.2d 1006, 1008 (9th Cir. 1986) (“Although pro se, [an appellant] is expected
 17 to abide by the rules of the court in which he litigates.”).

18 Based on the above, this Court lacks subject matter jurisdiction to hear the present appeal;
 19 thus, this appeal must be dismissed.

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 21
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 25 _____
 26 ⁴ It is also worth noting for the Court that the Appellant did not file a designation of the items to
 27 be included in the record or a statement of the issues to be presented as required by the Federal
 Rules of Bankruptcy Procedure and that the time to do so expired on March 27, 2020. Fed. R.
 Bankr. P. 8009; Appeal Docket No. 4.

CONCLUSION

For the reasons set forth herein, the Appellant's notice of appeal is untimely and his appeal must be dismissed for lack of subject matter jurisdiction.

DATED this 8th day of April, 2020.

LEE HIGH, LTD.

/s/ Elizabeth High, Esq.

CECILIA LEE, ESQ.

ELIZABETH HIGH, ESQ.

Attorneys for Appellee Christina W. Lovato,
chapter 7 trustee

CERTIFICATE OF COMPLIANCE WITH FED. R. BANKR. P. 8013(f)(3)(A)

This document complies with the word limit of Fed. R. Bankr. P. 8013(f)(3)(A) because, excluding the parts of the document exempted by Fed. R. Bankr. P. 8015(g) and excluding the accompanying documents authorized by Fed. R. Bankr. P. 8013(a)(2)(C), this document contains 2,447 words.

DATED this 8th day of April, 2020.

LEE HIGH, LTD.

/s/ Elizabeth High, Esq.

CECILIA LEE, ESQ.

ELIZABETH HIGH, ESQ.

Attorneys for Appellee Christina W. Lovato,
chapter 7 trustee

INDEX OF EXHIBITS

Exhibit	Description	No. of Pages⁵
1	Plaintiff's Motion for Partial Summary Judgment; Declarations of Trustee Christina W. Lovato and Timothy Nelson, CPA; and Notice of Hearing on Plaintiff's Motion for Partial Summary Judgment	22 pages
2	Certificate of Service of Adv. Proc. Docket Nos. 16-22	10 pages
3	Motion to Withdraw as Counsel of Record for Defendants (without exhibit) and Notice of Hearing	7 pages
4	Response to Motion to Withdraw as Counsel of Record for Defendants and Certificate of Service	8 pages
5	Reply in Support of Plaintiff's Motion for Partial Summary Judgment and Certificate of Service	8 pages
6	Transcript of February 6, 2020 Hearing	8 pages
7	Order Granting Motion to Withdraw as Counsel of Record for Defendants	3 pages
8	Notice of Entry of Findings of Fact and Conclusions of Law in Support of Order Granting Plaintiff's Motion for Partial Summary Judgment and Order Granting Plaintiff's Motion for Partial Summary Judgment and Certificate of Service	21 pages
9	Notice of Entry of Judgment and Certificate of Service	10 pages

⁵ Page numbers exclude exhibit title pages.

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Fed. R. Bankr. P. 8011(c), I certify under penalty of perjury that I am an employee of LEE HIGH, LTD., 448 Ridge Street, Reno, Nevada 89501, and that on April 8, 2020, I served the APPELLEE'S MOTION TO DISMISS APPEAL via the Court's Notice of Electronic Filing system.

I further state that I am familiar with the practice of LEE HIGH, LTD. for service of documents via electronic mail and that, in accordance with that standard practice, on April 8, 2020, I caused to be electronically mailed the APPELLEE'S MOTION TO DISMISS APPEAL to Scott Madison at scott@ourrep.net.

I finally state that I am familiar with the practice of LEE HIGH, LTD. for depositing items for delivery in the United States mail and that, in accordance with that standard practice, on April 9, 2020, I placed copies of the APPELLEE'S MOTION TO DISMISS APPEAL in the United States mail, first class postage prepaid, addressed to:

Scott A. Madison
P.O. Box 18886
Reno, NV 89511

DATED this 8th day of April, 2020.

/s/ Elizabeth Dendary, CP
ELIZABETH DENDARY, CP
Certified Paralegal